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7 Attorneys for Plaintiff
United States of America

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JULIO LUCAS-GARCIA,

14 Defendant.

) Criminal Case No. 08CR1625-BEN

) Date: August 11, 2008

) Time: 2:00 p.m.

) Place: Courtroom 3

) The Honorable Roger T. Benitez

) **UNITED STATES' NOTICE OF MOTIONS
AND MOTIONS FOR:**

- 15) (1) **FINGERPRINT EXEMPLARS;**
16) (2) **RECIPROCAL DISCOVERY; AND**
17) (3) **LEAVE TO GRANT FURTHER**
18) **MOTIONS**
19)
20)
21)

22 PLEASE TAKE NOTICE that on August 11, 2008, at 2:00 p.m., or as soon thereafter as counsel
23 may be heard, plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt,
24 United States Attorney, and Joseph J.M. Orabona, Assistant United States Attorney, will move the Court
25 to enter an order granting the following motions.

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MOTIONS

The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and Joseph J.M. Orabona, Assistant United States Attorney, hereby moves this Court for an order granting the following motions for:

1. Fingerprint Exemplars;
2. Reciprocal Discovery; and
3. Leave to File Further Motions

The motions noted above are based on the files and records of this case, together with the a separately captioned statement of facts and memorandum of points and authorities.

DATED: August 6, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

/s/ Joseph J.M. Orabona
JOSEPH J.M. ORABONA
Assistant United States Attorney

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7 Attorneys for Plaintiff
United States of America
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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,)	Criminal Case No. 08CR1625-BEN
)	
13 Plaintiff,)	Date: August 11, 2008
)	Time: 2:00 p.m.
14 v.)	Place: Courtroom 3
)	
15)	The Honorable Roger T. Benitez
)	
16 JULIO LUCAS-GARCIA,)	
)	STATEMENT OF FACTS AND
17 Defendant.)	MEMORANDUM OF POINTS AND
)	AUTHORITIES
18)	
19)	
20)	

21 The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P.
22 HEWITT, United States Attorney, and Joseph J.M. Orabona, Assistant United States Attorney, hereby
23 files its Motions in the above-referenced case for (1) Fingerprint Exemplars; (2) Reciprocal Discovery;
24 and (3) Leave to File Further Motions. These motions are based on the files and records of this case
25 together with the attached statement of facts and memorandum of points and authorities.

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I**STATEMENT OF THE CASE**

On May 21, 2008, a federal grand jury in the Southern District of California returned an Indictment charging Julio Lucas-Garcia ("Defendant") with deported alien found in the United States, in violation of 8 U.S.C. § 1326(a) and (b). On June 2, 2008, Defendant was arraigned on the Indictment and pled not guilty. The United States hereby files the following motions for fingerprint exemplars, reciprocal discovery and leave to file further motions.

II**STATEMENT OF FACTS****A. OFFENSE CONDUCT****1. Apprehension by San Diego Sheriff Department**

On May 8, 2007, at approximately 8:25 p.m., San Diego Sheriff M. Paquette responded to a radio call concerning a suspected drunk driver traveling southbound on Pomerado Road in Poway, California. Sheriff Paquette followed a Honda Accord that was drastically swerving within its own lane. Sheriff Paquette performed a traffic stop of the Honda Accord and approached the driver, later identified as "Alfredo" Garcia (true name: Julio Lucas-Garcia, Defendant). Defendant was arrested and charged with several vehicle code violations, including Driving under the Influence of Alcohol, in violation of California Vehicle Code § 23152(A). Defendant was convicted of DUI and sentenced to state custody.

2. Immigration Detainer by ICE

On December 19, 2007, while Defendant was in custody at Richard J. Donovan Correctional Facility, an Immigration Enforcement Agent ("ICE") determined that Defendant was a citizen and national of Mexico and placed a detainer pending Defendant's release from state custody.

3. Defendant Referred to ICE Custody

On March 12, 2008, at approximately 9:45 a.m., Defendant was released from state custody and referred to ICE custody for removal proceedings. An ICE Deportation Officer reviewed various immigration databases and conducted a records check confirming that Defendant was a citizen and national of Mexico having previously been deported from the United States.

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B. DEFENDANT'S IMMIGRATION HISTORY

A records check confirmed that Defendant is a citizen and national of Mexico, and that Defendant was ordered excluded, deported, and removed from the United States to Mexico pursuant to an order issued by an immigration judge on August 9, 2005 and May 5, 2005. After Defendant's last deportation, there is no evidence in the reports and records maintained by the Department of Homeland Security that Defendant applied to the U.S. Attorney General or the Secretary of the Department of Homeland Security to lawfully return to the United States.

C. DEFENDANT'S CRIMINAL HISTORY

Defendant has an extensive criminal history. The United States, propounds that Defendant has at least eight criminal history points placing him in Criminal History Category IV.

CONVICT DATE	COURT OF CONVICTION	CHARGE	TERM
12/1/2004	Superior Court of California Vista	Cal. PC § 245(a)(1) – Assault with a Deadly Weapon Likely to Cause Great Bodily Injury (Felony)	365 days, 3 yrs probation
		7/18/2007: Probation revoked	2 years prison
7/18/2007	Superior Court of California Vista	Cal. VC § 23152(A) – Driving under the Influence of Alcohol (Misdemeanor)	180 days jail

III**MEMORANDUM OF POINTS AND AUTHORITIES****A. MOTION FOR FINGERPRINT EXEMPLARS**

The United States requests that the Court order that Defendant make himself available for fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). Identifying physical characteristics, including fingerprints, are not testimonial in nature and the collection and use of such evidence would not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal of blood is not testimonial).

1 **B. MOTION FOR RECIPROCAL DISCOVERY**

2 The United States hereby requests Defendant deliver all material to which the United States may
3 be entitled under Fed. R. Crim. P. 16(b) and 26.2.

4 **1. Defendant's Disclosures Under Fed R. Crim. P. 16(b)**

5 The United States has voluntarily complied and will continue to comply with the requirements
6 of Fed. R. Crim. P. 16(a). As of the date of this Motion, the United States has produced 109 pages of
7 discovery (including reports of the arresting officers and agents, a criminal history report, documents
8 concerning Defendant's prior convictions, immigration history, and other documents from Defendant's
9 Alien File ("A-File")), 1 DVD-ROM containing Defendant's videotaped, post-arrest statement, and
10 tapes of Defendant's deportation hearing.

11 As of the date of this Motion, the United States has **not** received any reciprocal discovery from
12 Defendant. Therefore, the United States invokes Fed. R. Crim. P. 16(b), requiring that reciprocal
13 discovery be provided to the United States. The United States hereby requests Defendant permit the
14 United States to inspect, copy, and photograph any and all books, papers, documents, photographs,
15 tangible objects, or make copies of portions thereof, which are within the possession, custody or control
16 of Defendant and which Defendant intends to introduce as evidence in his case-in-chief at trial.

17 The United States further requests that it be permitted to inspect and copy or photograph any
18 results or reports of physical or mental examinations and of scientific tests or experiments made in
19 connection with this case, which are in the possession or control of Defendant, which he intends to
20 introduce as evidence-in-chief at the trial, or which was prepared by a witness whom Defendant intends
21 to call as a witness. Because the United States will comply with Defendant's request for delivery of
22 reports of examinations, the United States is entitled to the items listed above under Fed. R. Crim. P.
23 16(b)(1). The United States also requests that the Court make such order as it deems necessary under
24 Fed. R. Crim. P. 16(d)(1) and (2) to ensure that the United States receives the discovery to which it
25 is entitled.

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1 **2. Witness Statements Under Fed. R. Crim. P. 26.2**

2 Fed. R. Crim. P. 26.2 requires the production of prior statements of all witnesses, except a
3 statement made by Defendant. Fed. R. Crim. P. 26.2 requires reciprocal production of statements, in
4 accordance with the Jencks Act.

5 The timeframe established by Fed. R. Crim. P. 26.2 requires the statement to be provided after
6 the witness has testified. In order to expedite trial proceedings, the United States hereby requests
7 Defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before
8 trial to be set by the Court. Such an order should include any form in which these statements are
9 memorialized, including but not limited to, tape recordings, handwritten or typed notes and/or reports.

10 **C. MOTION FOR LEAVE TO FILE FURTHER MOTIONS**

11 Should new information or legal issues arise, the United States respectfully requests the
12 opportunity to file such further motions as may be appropriate.

13 **IV**

14 **CONCLUSION**

15 For the foregoing reasons, the United States requests the Court grant the United States' Motions
16 for Fingerprint Exemplars, Reciprocal Discovery and Leave to File Further Motions.

17 DATED: August 6, 2008

18 Respectfully submitted,

19 KAREN P. HEWITT
20 United States Attorney

21 /s/ Joseph J.M. Orabona
22 JOSEPH J.M. ORABONA
23 Assistant United States Attorney
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA) Criminal Case No. 08CR1625-BEN
)
Plaintiff,)
)
v.) **CERTIFICATE OF SERVICE**
)
JULIO LUCAS-GARCIA,)
)
Defendant.)

IT IS HEREBY CERTIFIED that:

I, Joseph J.M. Orabona, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of the **Notice of Motions and Motions** For (1) Fingerprint Exemplars; (2) Reciprocal Discovery; and (3) Leave to File Further Motions; together with the separately captioned Statement of Facts and Memorandum of Points and Authorities on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Charles Halligan Adair
Law Offices of Charles H. Adair
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San Diego, California 92101
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Lead Attorney for Defendant

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 6, 2008.

/s/ Joseph J.M. Orabona
JOSEPH J.M. ORABONA
Assistant United States Attorney